No. 9822.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

J. LeRoy Moser and Cecil Carroll Moser, husband and wife,

Appellants,

vs.

Mortgage Guaranty Company, a corporation,

Appellee.

BRIEF OF APPELLEE.

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BRIEF OF APPELLEE.

Jurisdictional Statement.

The jurisdictional statement contained in the brief of appellants is correct. (App. Op. Br. p. 2.)

Statute Involved.

This matter arises out of Section 75(s)(3) of the Bankruptcy Act as amended (11 U. S. C. A., Sec. 203s), which provides for a reappraisal of the debtor's property at the end of three years after the order staying all proceedings against debtor or his property. Appellants have set forth this statute verbatim in appellant's opening brief, pages 3 to 6, inclusive. For this reason appellee will not again print the statute at length.

Additional Facts Re Statement of Case.

In addition to the facts stated in appellants' opening brief under "Statement of the Case," appellee wishes to call the Court's attention to the following additional matters which are material to the consideration of the question of the value of the Moser property.

This Court had the opportunity to review the initial proceedings in this matter in April, 1938, upon appeal by appellee from an order of the District Court refusing to dismiss this case. (*In re Moser,* 95 Fed. (2d) 944.)

As disclosed by that opinion, the debtors' affidavit valued the property involved here at over $40,000.00. [See also Tr. p. 68.] The creditors' affidavit claimed the value to be not over $20,000.00 and the indebtedness then due to be $19,944.51.

The three appraisers appointed after the debtors' adjudication under section 75(s) of the Bankruptcy Act filed their report showing the value of the property to be $25,000.00, which was approved by the Conciliation Commissioner sitting as Referee on December 1, 1937. [Tr. pp. 2-4.]

The debtors requested a reappraisal of the property on December 2, 1940, pursuant to section 75(s)(3) of the Act, and an appraiser was appointed for this purpose. Appellee on December 18, 1940, requested the Conciliation Commissioner to hold a hearing on the question of value. [Tr. pp. 11-12.] The appraiser's report was filed January 10, 1941. [Tr. p. 13.]

A hearing was held by the Commissioner on January 24, 1941, at which hearing the debtors, counsel for the secured creditor MORTGAGE GUARANTEE COMPANY, Boyce R. Fitzgerald, the Court's appraiser, F. A. Nighbert, a witness for said creditor and H. L. Richmond, manager of the Fresno office of said creditor, were present. Evidence was taken as to value of the property and the debtor, J. LeRoy Moser, joined in the proceedings, cross-examined witnesses [Tr. pp. 65-70, 72-73] and testified throughout the proceedings on the question of value himself. [Tr. pp. 49-78.] No objection was interposed as to the method of procedure adopted by the Conciliation Commissioner by the debtors.

It will be presumed that the Conciliation Commissioner called such meeting pursuant to the authority and discretion invested in him by section 75(s)(3) of the Bankruptcy Act. No other provision in the Act authorizes such hearing or proceeding after the three-year period has expired.

The debtors, on this appeal, contend that after an appraiser is appointed for reappraisal purposes, the power of the Conciliation Commissioner is limited to either approval or rejection of the appraiser's report and that the fixing of value after taking of evidence to determine true value is not authorized by the statute in such a case. [Tr. pp. 15-16.]

It is from the order of the Court approving and confirming the procedure and value so fixed by the Conciliation Commissioner that the appeal is taken.

Summary of Argument.

POINT I. Procedure prescribed in section 75(s)(3) of the Bankruptcy Act was followed in fixing value.

A. Section 75(s), subdivision (3), must be interpreted so as to carry into effect the true intent and object of the Legislature.

B. Under section 75(s)(3), the Court is granted discretionary power as to the method to be used in fixing value.

C. Where the Court has exercised the discretionary power invested in it, the act is not reviewable on appeal unless there is shown a gross abuse of discretion.

D. The fixing of the value of $12,000.00 by the Conciliation Commissioner by necessary implication rejected the report of the appraiser.

E. The Conciliation Commissioner had the right to view the property and his certificate discloses his order was based upon the evidence adduced at the hearing.

(1) The Court may, in the exercise of its discretion, view the premises in controversy.

(2) It will be presumed that in making his order the Conciliation Commissioner considered only competent evidence. It will further be presumed that on the petition for review the District Court Judge considered only competent evidence disclosed by the record.

(a) Bankruptcy proceedings are inherently proceedings in equity.

(b) On appeal in equity proceedings it will be presumed that the trial justice considered only competent evidence.

POINT II. The Court's order of March 14, 1941, approving the value of $12,000.00 fixed by the Conciliation Commissioner is in accordance with the evidence.

A. Testimony of Boyce R. Fitzgerald.

(1) Appraised property at $9,000.00.

(2) Estimate of market value based only on sales.

(3) Did not consider Mosesian sale.

(4) Would have appraised Moser property at $9,000.00 in 1937.

(5) Proper care would have resulted in greater value.

B. Testimony of F. A. Nighbert.

(1) In arriving at value, used various methods of appraisal.

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(1) Value of $40.000.00 in 1937, $9,000.00 today!

D. No one theory of valuation should be exclusively used.

(1) The purpose and intent of section 75(s)(3) relative to value is to determine the fair valuation of the debtors' property.

POINT III. The Conciliation Commissioner had the right to view the property. Prejudicial error was not committed, as the valuation was based upon evidence adduced at the hearing.

POINT IV. The evidence fully justified the order of the Court of March 14, 1941, as to the value of the property.

POINT I.

Procedure Prescribed in Section 75(s)(3) of the Bankruptcy Act Was Followed in Fixing Value.

A. Section 75(s), Subdivision (3), Must be Interpreted so as to Carry Into Effect the True Intent and Object of the Legislature.

The intent and purpose of section 75(s)(3) of the Bankruptcy Act is to ascertain the value of the debtors' property at the end of three years. Section 75(s)(3) provides: "Upon request of any secured or unsecured creditor or upon request of the debtor, the Court shall cause a reappraisal of the debtors' property, or in its discretion, set a date for hearing, and after such hearing fix the value of the property." The Supreme Court of the United States, in the case of *Wright v. Union Central Life Ins. Co.*, 311 U. S. 273; 61 S. Ct. 196, in discussing the rights of the debtors and creditors under this section of the Act, states as follows:

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. *John Hancock Mutual Life Ins. Co. v. Bartels, supra,* at pp. 186-187; *Borchard v. California Bank, supra,* at p. 317. There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (*John Hancock Mutual Life Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, supra*), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

The fundamental rule that a statute should be interpreted so as to carry into effect the true intent and object of the Legislature in the enactment, is perhaps the most potent of the general rules of statutory construction applied to the Bankruptcy Act.

6 *Am. Jur.* 522;

Williams v. U. S. F. & G. Co., 236 U. S. 549; 59 L. Ed. 713; 35 S. Ct. 289.

A technical construction conflicting with the fundamental purpose of the Act, or one inconsistent with the liberal spirit which pervades the entire bankruptcy system, will not be applied.

Neal v. Clark, 95 U. S. 704.

B. Under Section 75(s)(3), the Court Is Granted Discretionary Power as to the Method to be Used in Fixing Value.

Bankruptcy Act, Section 75(s)(3);

11 *U. S. C. A.,* Section 203(s).

This subsection expressly grants to the Court the right to hold a hearing to fix value if, in its discretion, this should be done. The Act does not prohibit a reappraisel to assist the Court upon such hearing and the appellants' contention that the Court, by causing a reappraisal to be made, is foreclosed of the power to fix the value after a hearing, is not in accordance with the statute or the rules of interpretation thereof. It is apparent that the intention of the Legislature was that the true value of the property should be ascertained. Here the Conciliation Commissioner, in the exercise of his discretion, held a meeting for the purpose of considering the reappraisal and evi-

dence as to value of the property. It is true that the Conciliation Commissioner could have approved the report of the appraiser at such hearing, but he did not do so, and that he was justified in fixing the value at $12,000.00 is clear from a consideration of the appraisers' testimony and the other evidence adduced at the hearing.

C. Where the Court Has Exercised the Discretionary Power Invested in It, the Act Is Not Reviewable on Appeal Unless There Is Shown a Gross Abuse of Discretion.

Burns v. United States, 287 U. S. 216;

Coeur d'Alene, etc. Co. v. Thompson, 9th Cir. (215 F. 8).

D. The Fixing of the Value of $12,000.00 by the Conciliation Commissioner by Necessary Implication Rejected the Report of the Appraiser.

The appellants complain that no reference was made to the reappraisal in the order of the Conciliation Commissioner fixing the value of the property and state that therefore no order or ruling was made by the Conciliation Commissioner on such reappraisal.

The appraiser's report estimated and appraised the value of the real property at the sum of $9,000.00. After considering such appraisal and the testimony of the appraiser, as well as other evidence adduced at the hearing, the Conciliation Commissioner found the value to be $12,000.00.

The fixing of the value of $12,000.00, by necessary implication carried with it a rejection of the appraisal and it is well settled that an order cannot be reversed because of the failure to make an express rejection where it is necessarily implied from the findings and order as made.

Fox v. Haarstick, 156 U. S. 674; 39 L. Ed. 576; 15 S. Ct. 457;

Shepard v. Yale, 270 Pac. 742; 94 Cal. App. 104;

New Blue Paint Min. Co. v. Weissbein, 45 A. L. R. 781; 244 Pac. 325; 198 Cal. 261.

The Conciliation Commissioner could have approved the report of the appraiser and thereupon the parties would have had the right to object to and appeal from such appraisal and the approval thereof. Appellants have the same right to appeal from the order fixing value after hearing. Which right they are exercising. They have not been prejudiced by this procedure.

E. The Conciliation Commissioner Had the Right to View the Property and His Certificate Discloses His Order Was Based Upon the Evidence Adduced at the Hearing.

(1) *The Court May, in the Exercise of Its Discretion, View the Premises in Controversy.*

64 *Corpus Juris,* p. 1200, Sec. 1005;

Wall v. U. S. Min. Co., 232 Fed. 613.

Upon a view of the property, the conditions observed and bearing on the case are independent evidence which may be considered by the trier of facts in arriving at its decision.

Gates v. McKinnon, 18 Adv. Cal. 153;

Wall v. U. S. Min. Co., supra.

It is clear therefore that a view of the property by the Conciliation Commissioner did not constitute error.

(2) *It Will be Presumed That in Making His Order the Conciliation Commissioner Considered Only Competent Evidence. It Will be Further Presumed That on the Petition for Review the District Court Judge Considered Only Competent Evidence Disclosed by the Record.*

Appellants contend that the Commissioner based his finding and order on facts not submitted at the hearing which, in addition to the visit to the ranch, included conversation with other property owners. In summing up his view of the matter, the Conciliation Commissioner stated:

> "I therefore conclude that the value of debtor's ranch property is not contrary to the evidence *adduced at the hearing* and from personal knowledge of land values in the vicinity of this property."

The order fixing the value [Tr. p. 21] provides as follows:

> "Evidence was adduced concerning the value at this time of the ranch and vineyard belonging to the

> debtors and the matter having been ordered submitted and after due deliberation and consideration, the Court concludes that the value of the said ranch and vineyard belonging to debtors and set forth in their petitions and schedules on file in these proceedings is the sum of twelve thousand dollars ($12,000.00)."

Appellee contends that the evidence introduced at the hearing amply supports the Commissioner's finding. While the certificate discloses that he talked to other property owners in the vicinity, so long as there is competent evidence in the record to sustain the finding, it is to be presumed that all incompetent evidence was disregarded by him and that the Commissioner considered only the competent evidence adduced. Furthermore, it will certainly be presumed that when this matter was brought on for rehearing before the District Court, such Court considered only the competent evidence and there is nothing whatsoever in the record to show that the District Court Judge was in any way influenced by incompetent evidence and in fact the order of said Honorable Paul J. McCormick on said Petition for Review [Tr. pp. 27-31] states that after a full consideration of the transcript of the evidence and the record, the value fixed in the sum of $12,000.00 "is supported by the evidence."

In support of the above argument appellee respectfully calls the Court's attention to the following points and authorities:

(a) Bankruptcy proceedings are inherently proceedings in equity.

Local Loan Co. v. Hunt, 292 U. S. 234, 78 L. Ed. 1230, 54 S. Ct. 695, 93 A. L. R. 195, 24 Am. Bankr. Rep. (N. S.) 668.

(b) On appeal in equity proceedings it will be presumed that the trial justice considered only competent evidence, notwithstanding receipt of incompetent evidence.

Faunce v. Woods, 5 F. (2d) 753;

Clauson v. United States, 60 F. (2d) 694;

Southern Pacific Co. v. Calbaugh (C. C. A. 9th), 18 F. (2d) 837.

Where the record contains sufficient competent evidence to sustain a decree, the trial judge will be presumed to have based his decision on such competent evidence only, though the master reported incompetent evidence.

Leland v. Morrison, 92 S. C. 501, 75 S. E. 889, Ann. Cas. 1914B, 349;

Champion v. McCarthy, 228 Ill. 87, 81 N. E. 808, 11 L. R. A. (N. S.) 1052, 10 Ann. Cas. 517.

It is respectfully submitted that the record does contain sufficient competent evidence to support the order of the Conciliation Commissioner and the order of the District Court Judge on Petition for Review. Such evidence is set forth under Point II.

POINT II.

The Court's Order of March 14, 1941, Approving the Value of $12,000.00 Fixed by the Conciliation Commissioner Is In Accordance With the Evidence.

A. Testimony of Boyce R. Fitzgerald.

(1) *Appraised Property at $9,000.00.*

Boyce R. Fitzgerald appraised the debtors' property at $9,000.00. [Tr. p. 13; pp. 50,51.]

(2) *Estimate of Market Value Based Only on Sales.*

He admitted his appraisal was based entirely on sales occurring during the year of 1937, with one exception. [Tr. p. 57.] The reappraisal was made January 10, 1941. [Tr. p. 13.]

(3) *Did Not Consider Mosesian Sale.*

He did not know about the sale of the Mosesian property in 1937 for $16,000.00, which property adjoined debtors' land on the north. [Tr. pp. 60-70.]

(4) *Would Have Appraised Moser Property at $9,000.00 in 1937.*

He testified that he would have appraised the debtors' property in 1937 at $9,000.00 and that there were no conditions between 1937 and 1939, other than the upkeep of the property itself, which would change his views as to its value. [Tr. p. 57.]

(5) *Proper Care Would Have Resulted in Greater Value.*

Mr. Fitzgerald further stated that the vines had not been properly pruned, irrigation had been neglected and that if the property had been properly maintained during the last three years, it would have been worth more money. [Tr. p. 55.]

It is respectfully submitted that the appraiser's report was properly disregarded. Three presumably qualified court appraisers appraised this property in 1937 at $25,000.00, at which time Mr. Fitzgerald states the property was of the value of only $9,000.00. Sales are not the only criterion with which to determine value. The testimony of the appraiser further shows that the debtors' own failure to properly maintain the property during the past three years has caused the same to depreciate in value. It certainly was not the intention or purpose of Section 75 of the Bankruptcy Act to permit a debtor to retain possession of the property for three years and neglect the same and thereby depress the value to a point where a low appraisal of its worth can be obtained upon the expiration of the three-year period.

B. Testimony of F. A. Nighbert.

(1) *In Arriving at Value, Used Various Methods of Appraisal.*

Mr. Nighbert testified that in arriving at a value in excess of $20,000.00 for the debtors' land, vineyards and improvements, he based the same on the following:

a. 25 years' experience as State Inheritance Tax Appraiser for Kern County. [Tr. p. 61.]

b. Actual sales of property, including the Mosesian sale at $16,000.00 for the 80 acres immediately adjoining the debtor on the north [Tr. p. 62], and the sale of his own property. [Tr. p. 66.]

c. The nature of the land and vineyard and the character, nature and construction of improvements on the property. [Tr. p. 63.]

d. The location of the property within the city limits of Delano. [Tr. p. 62.]

(2) *Direct Evidence to Support Valuation of $12,000.00.*

In view of the facts brought out upon this examination, particularly as to the Mosesian sale at $16,000.00, which property was substantially the same as the Moser property, but having a better well [Tr. p. 77] and the fact that $3,000.00 would be the cost of reconditioning the Moser well [Tr. p. 64], appellants' own contention that actual sales should determine the value, would fix a value on the Moser property of $13,000.00. It is further apparent that by reason of the wide planting on the Moser property and improper care, as testified to by Mr. Fitzgerald [Tr. pp. 54, 55] further deduction from the value should be made. Considering these points alone, without all the additional testimony as to value, both the Conciliation Commissioner and the Court were justified in placing a value of $12,000.00 upon the Moser property.

C. Testimony of J. LeRoy Moser.

(1) *Value of $40,000.00 in 1937, $9,000.00 Today!*

The original petition filed by Mr. Moser at the inception of these proceedings and the affidavits referred to in the Court's opinion in the case of *In re Moser*, 95 F. (2d) 944, as well as his admission of this fact [Tr. p. 68], is an indication of what the debtors themselves considered their property to be worth. This value was fixed at $40,000.00. It is, of course, now the debtors' desire to obtain just as low a valuation or appraisal as possible and the debtors now contend that the property is worth not more than $9,000.00. The Court, in taking judicial notice of the economic conditions in the State of California during the past three years, knows that the value of the property would not have depreciated from $40,000.00 to $9,000.00 if properly maintained and cultivated. Mr. Moser further bases his present valuation on his contention that the income from the grapes has dropped approximately one-half during the past three years. [Tr. pp. 69 and 73.] There was thus injected into the hearing testimony as to the income from the property, which has has been materially reduced during the past three years. Income is an element to be considered in fixing value, but not the exclusive criterion.

D. No One Theory of Valuation Should Be Exclusively Used.

It is respectfully submitted that the fixing of the value of the debtors' property at $12,000.00 was in accordance with the evidence adduced at the hearing.

(1) *The Purpose and Intent of Section 75(s) (3) Relative to Value Is to Determine the Fair Valuation of the Debtors' Property.*

Bankruptcy Act, Sec. 75(s) (3);

11 *U. S. C. A.,* Sec. 203;

Wright v. Union Central Life Ins. Co., supra.

The Conciliation Commissioner in this case gave the matter thorough and careful consideration in arriving at his valuation of $12,000.00 and where the appraiser appointed by him admitted that his sole basis of fixing a value of $9,000.00 was upon sales of property, the Conciliation Commissioner was justified in hearing evidence on other matters to be considered in arriving at the fair value of the property. We refer the Court to the case of *In re Reb Holding Co.,* 35 Fed. Sup. 716, which is one of the few cases discussing value of property, and although the case arose pursuant to the Corporate Reorganization provisions of the Bankruptcy Act, the language is peculiarly applicable to the situation in this case. In that case the Court stated:

> "The Bankruptcy Act does not define any formula for determining what is a fair valuation."

The Court also quoted from Finletter in his work on "The Law of Bankruptcy Reorganization," page 559, as follows:

> "Low present earnings affected by the depressing factors which attend most companies prior to and during a period of reorganization or by other unusual

circumstances, would give an unfairly low present appraisal of the properties unless the probability of an improvement in earnings were to be considered.

"To the same effect was the decision in Central States Life Ins. Co. v. Koplar, 8 Cir., 85 F. (2d) 181, at page 184, where the court said: 'We would not be justified in holding that the earning capacity of the property during the depression years should alone be considered in ascertaining its value."

and the Court stated that in the last mentioned case evidence was permitted as to cost and reproduction cost and use value in arriving at determination of the fair value; and that the same was true in *Hard & Rand v. Biston Coffee Co.,* 8th Cir., 41 F. (2d) 625. The Court further stated as follows:

"I am of the opinion that no one theory of valuation should be used exclusively in arriving at a fair valuation. By using the various recognized methods, any inaccuracy which might be inherent in one method, can be eliminated.

"It is the purpose of Chapter X, 11 U. S. C. A., Sec. 501 *et seq.,* to conserve if possible the full value of the property for junior creditors or for the debtor as well as for the creditors who might have priority. There of course must be an absolute protection of priorities, Case *et al.* v. Los Angeles Lumber Products Co., Ltd., 308 U. S. 106, 60 S. Ct. 1, 84 L. Ed. 110, but that decision does not necessarily determine the rules or methods for determining what is a fair value.

"Our determination here should not be based upon what the building originally cost, less depreciation to this time, because such a method does not give proper effect to changed conditions.

"The earnings of the property during the past six years is an important element to be considered, and yet in this particular instance it is not necessarily controlling. The income received from the property in the years 1929, 1930 and 1931 was much higher than during any of the past six years. In that period (1929-1931) the debtor made considerable progress in paying off both first mortgage and second mortgage bonds. Likewise, the appraisal made by the court appraisers is now more than one year old, and it is a matter of common knowledge, as well as shown by the evidence, that building costs have increased during the past year. There was a difference of opinion as to the cubical contents of the building. All of which goes to show that the court should, as was done in this case, receive evidence based on various theories of valuation and then, in the light of all of the conditions and circumstances, arrive at a fair valuation, considering the purpose of Chapter X of the Bankruptcy Act."

It is therefore respectfully submitted that the Conciliation Commissioner was justified in considering the various methods of valuation as testified to by the witnesses at the hearing and that the finding of a value of $12,000.00 is supported by the evidence.

POINT III.

The Conciliation Commissioner Had the Right to View the Property. Prejudicial Error Was Not Committed, as the Valuation Was Based Upon Evidence Adduced at the Hearing.

Appellee has answered the contention of appellants that improper evidence was considered by the Commissioner under Point I-E, *supra*. The Conciliation Commissioner had a right to view the property and such view was evidence which could be considered by him.

Wall v. U. S. Min. Co., 232 Fed. 613;

Gates v. McKinnon, 18 A. C. 153.

The record does not disclose that the property owners were witnesses, as contended by the appellants. The certificate on review stated, "The Court is empowered to fix the value arrived at from all the evidence adduced at the hearing." It will be presumed that the Conciliation Commissioner considered only such competent evidence. See the points and authorities referred to under Point I-E.

POINT IV.

The Evidence Fully Justified the Order of the Court of March 14, 1941, as to the Value of the Property.

Appellants' contention under this point to the effect that the evidence did not justify a finding that the property is worth $12,000.00, has been answered by appellee under Point II and appellee respectfully refers the Court to its argument and authorities thereunder. It is clear from the contention raised by the appellants under this point that they consider the sales of the property in 1937, approximately three years prior to the reappraisal, with one exception, as the only theory of valuation to be used. Although Mr. Fitzgerald did testify as to one sale which occurred approximately one month or six weeks prior to his appraisal of the property in question, the consideration for which was $9,000.00, this property was located two and one-half miles southeast of the Moser property. [Tr. p. 56.] In contrast to this evidence we have the evidence of the appraisal in 1937 by three presumably qualified appraisers appointed by the Court to appraise this property and who appraised it at that time at a value of $25,000.00. Mr. Fitzgerald stated that values have not changed during the past three years. [Tr. p. 57.] We also have the testimony of Mr. Nighbert who believed the property to be worth in excess of $20,000.00.

In 1937 Mr. Moser valued the land at $40,000.00, based upon the sale of the place south of him for $20,750.00. [Tr. p. 68.] If we again deduct from this last mentioned sale price the cost of reconditioning the pumping facilities and the nature of the vineyard on the Moser property, and the reduction of income, we find an amount reasonably near the value fixed by the Court.

Conclusion.

In 1937 at the inception of these proceedings under Section 75 of the Bankruptcy Act, the debtors owed appellee the total sum of $19,944.51. Today the indebtedness has increased to in excess of $24,800.00. In 1937 the property was appraised by the Court's appraisers at $25,000.00. The Court has now fixed a valuation thereon of $12,000.00. It is a reasonable assumption that if appellee had been permitted to foreclose its security in 1937, it would have realized sufficient to have discharged the indebtedness upon a sale of the property. It is now apparent from the record that appellee, during the past three years, has incurred a loss by reason of these proceedings in excess of $12,000.00. The Supreme Court of the United States, in the case of *Wright v. Union Central Life Insurance Company, supra,* stated that the provisions of Section 75 of the Bankruptcy Act undoubtedly were designed to protect and rehabilitate distressed farmers; that such Act provided safeguards to protect the rights of secured creditors throughout the proceedings to the extent of the value of the property and that there is no con-

stitutional claim of a creditor to more than such value. This is a clear case where the creditor Mortgage Guarantee Company has been subjected to irreparable injury by the suspension of its remedies, which the law should not sanction. (*U. S. National Bank of Omaha v. Pamp*, 83 F. (2d) 493.) Appellee has not raised an objection to the low valuation of this property, as it desires to bring an end to these proceedings. Under the evidence, the Court would have been justified in ordering an immediate sale of the property. Appellants now seek to have the valuation fixed at $9,000.00 and presumably to discharge their obligation of $24,800.00 for this amount. No showing is made that even this sum could or would be paid by the debtors. Appellee respectfully submits that the order from which the appeal was taken should be affirmed; that it is fully supported by the evidence and was duly and regularly made in accordance with the intent and purpose of the act and pursuant thereto.

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